

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 19, 2021

1:32 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 15

"An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

- MOVED CSSB 15(JUD) OUT OF COMMITTEE

SENATE BILL NO. 23

"An Act relating to proposing and enacting laws by initiative."

- HEARD & HELD

SENATE BILL NO. 122

"An Act relating to the definition of 'victim.'"

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 15

SHORT TITLE: OPEN MEETINGS ACT; PENALTY

SPONSOR(s): SENATOR(s) COSTELLO

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	CRA, JUD

02/25/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/25/21	(S)	Heard & Held
02/25/21	(S)	MINUTE(CRA)
03/04/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/04/21	(S)	Heard & Held
03/04/21	(S)	MINUTE(CRA)
03/09/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/09/21	(S)	Moved CSSB 15(CRA) Out of Committee
03/09/21	(S)	MINUTE(CRA)
03/10/21	(S)	CRA RPT CS 1DP 1DNP 2NR NEW TITLE
03/10/21	(S)	DP: HUGHES
03/10/21	(S)	DNP: GRAY-JACKSON
03/10/21	(S)	NR: MYERS, WILSON
03/17/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/17/21	(S)	Heard & Held
03/17/21	(S)	MINUTE(JUD)
03/22/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/22/21	(S)	Heard & Held
03/22/21	(S)	MINUTE(JUD)
03/31/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/31/21	(S)	Heard & Held
03/31/21	(S)	MINUTE(JUD)
04/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/12/21	(S)	Heard & Held
04/12/21	(S)	MINUTE(JUD)
04/19/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SB 23

SHORT TITLE: INITIATIVE SEVERABILITY

SPONSOR(s): SENATOR(s) REVAK

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD
03/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/09/21	(S)	Heard & Held
03/09/21	(S)	MINUTE(STA)
04/13/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/13/21	(S)	Moved SB 23 Out of Committee
04/13/21	(S)	MINUTE(STA)
04/14/21	(S)	STA RPT 1DP 1DNP 3NR
04/14/21	(S)	NR: SHOWER, REINBOLD, HOLLAND
04/14/21	(S)	DP: COSTELLO
04/14/21	(S)	DNP: KAWASAKI
04/19/21	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

MELODIE WILTERDINK, Staff
Senator Mia Costello
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of the sponsor of SB 15, Senator Mia Costello.

FRANK MCQUEARY, President
Alaskans for Open Meetings
Anchorage, Alaska

POSITION STATEMENT: Raised concerns about SB 15.

DIRK CRAFT, Staff
Senator Josh Revak
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 23 on behalf of the sponsor, Senator Josh Revak.

ACTION NARRATIVE

[1:32:46 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Myers, Shower, Hughes, and Chair Holland.

SB 15-OPEN MEETINGS ACT; PENALTY

[1:33:13 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 15, "An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

[CSSB 15(CRA) was before the committee. This was the fifth hearing and public testimony was opened and closed on 3/31/21.]

[1:33:34 PM](#)

MELODIE WILTERDINK, Staff, Senator Mia Costello, Alaska State Legislature, Juneau, Alaska, on behalf of the sponsor, stated that at the last hearing, the committee adopted amendments to limit SB 15 to elected officials and to create a three-tier penalty provision, she said. If an elected official violates the Open Meetings Act, the official will receive a warning for the first violation, a civil penalty up to \$1,000 for the next

violation and be subject to a class B misdemeanor for the third violation, punishable for up to 90 days in jail and subject to a fine of up to \$2,000.

[1:34:23 PM](#)

CHAIR HOLLAND opened public testimony on SB 15.

[1:34:42 PM](#)

FRANK MCQUEARY, President, Alaskans for Open Meetings, Anchorage, Alaska, stated that the three-tier penalty provision does not consider the infraction's severity and may allow people to game the system. He referred to subsection (f), which states that illegal actions may be voidable. He paraphrased that if someone thinks an unlawful act is taking place at a meeting from which the public was excluded, those individuals must file a lawsuit within six months. He viewed this as an onerous process for individuals. Subsection (f) lists nine reasons why a judge should overlook the infraction and let the illegal act stand, which is inappropriate, he said.

MR. MCQUEARY explained that the penalties would depend on the number of infractions. However, some violations might be accidental, but others are not. He said he was unsure that a \$1,000 fine would be sufficient to deter people from violating the Open Meetings Act. He suggested the committee consider changing "voidable" to "void" to act as a barrier to bad behavior and to eliminate all of the instructions to the court.

[1:38:09 PM](#)

CHAIR HOLLAND, after first determining no one wished to testify, closed public testimony on SB 15.

[1:38:24 PM](#)

At ease

[1:39:16 PM](#)

CHAIR HOLLAND reconvened the meeting.

[1:39:28 PM](#)

SENATOR HUGHES recalled receiving his e-mail. She offered to work to address Mr. McQueary's concerns in the next committee of referral.

[1:40:09 PM](#)

CHAIR HOLLAND stated his preference to move the bill.

[1:40:39 PM](#)

SENATOR KIEHL said the bill has a further referral to the finance committee because of the fiscal notes. Although he has concerns, he will not object to moving the bill. He offered his view that SB 15 does not provide a consistent and rational public policy. For example, the planning commission could restrict people's ability to sell their property, which may be avoidable, but the party would not incur a penalty. However, a school board member giving direction to a superintendent on an ongoing program outside of a public meeting could incur jail time. Another issue is that the legislature will impose penalties on public officials that it does not impose on its members. Finally, he expressed concern that local taxpayers in smaller communities will be burdened by costs to defend a city council member and school board members who act in their official capacity. He recalled a city council member faced a \$37.50 fine from the Alaska Public Offices Commission (APOC) but the costs to defend the person cost the city \$15,000 in taxpayer dollars.

[1:43:28 PM](#)

SENATOR HUGHES reminded listeners that applying the Open Meetings Act to the legislature would require a separate bill. She stated her view that most people who want to serve also wish to adhere to the laws. She offered her belief that the penalty provision will make people work a little harder to ensure that they uphold the law. She envisioned that getting to the third penalty tier would likely be rare. She said she looked forward to discussing subsection (f) with Mr. McQuery, which is an existing statute and not a provision in the bill.

[1:44:54 PM](#)

SENATOR SHOWER moved to report SB 15, work order 32-LS-0176\G as amended from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 15(JUD) was reported from the Senate Judiciary Standing Committee.

[1:45:19 PM](#)

At ease

SB 23-INITIATIVE SEVERABILITY

[1:47:05 PM](#)

CHAIR HOLLAND reconvened the committee and announced the consideration of SENATE BILL NO. 23, "An Act relating to proposing and enacting laws by initiative."

[This was the first hearing on SB 23.]

[1:47:32 PM](#)

DIRK CRAFT, Staff, Senator Josh Revak, Alaska State Legislature, Juneau, Alaska, presented SB 23 on behalf of the sponsor, Senator Josh Revak. He read the sponsor statement

[Original punctuation provided]:

SB 23 seeks to ensure ballot initiative language that appears before voters at the ballot box is the same as the language circulated during the signature-gathering phase and to restore the legislature's important role in the initiative process.

Alaska's constitution details a very important right of our residents - the right to enact legislation through the voter initiative process. The legislature also has the right to enact legislation substantially the same as the proposed initiative thus removing it from the ballot.

The proposed ballot initiative language must be submitted to the State of Alaska for review. The Alaska Department of Law reviews the proposed language then provides the Lieutenant Governor a recommendation whether to certify or deny the language.

The Lieutenant Governor's certification is a key step in the initiative process. Only once certification happens will the state print petition booklets for gathering voter signatures. The petitioner then circulates the booklets to gather signatures and submits those to the state for verification. Once signatures are verified, an initiative can be prepared for the ballot.

Per our constitution, some issues are off-limits for ballot initiatives and initiatives can only cover one subject. But while a cursory legal review of language occurs before the Lieutenant Governor's certification, it has sometimes been the case that further review finds constitutional concerns with proposed language. In those cases, a party can file a lawsuit to force the issue through the court system. This can happen simultaneous to the circulation of signature booklets.

Under current law, if a court determines that language in a proposed initiative is unconstitutional and/or severed, an amended version of the language can appear before voters. This results in voters seeing a different initiative than the one they supported with their signature. Furthermore, if the courts revise/sever the language after the legislative review process, they deny the legislature its right to review the initiative as revised. The net effect of a court's severance is that an initiative can move forward to the voters that is substantially different than the initial version reviewed by the legislature.

SB 23 would rectify this situation. Under this bill, if a court determines that language in a proposed initiative is unconstitutional or severed, the Lieutenant Governor must reject the entire initiative petition and prohibit it from appearing on the ballot. Voters should be assured that language on the ballot has not changed from the language in the petition booklets supported with voter signatures and further, restores the legislature's right to review and enact substantially similar legislation to stop an initiative from moving forward.

I respectfully request your support for SB 23.

[1:50:05 PM](#)

CHAIR HOLLAND asked if there were any differences between SB 23 and Senate Bill 80, proposed by the late Senator Chris Birch during the last legislature.

MR. CRAFT responded that there were no changes. He pointed out that a Legislative Legal Services opinion raised some issues during a Senate State Affair Committee hearing. He offered to provide a copy to members.

[1:50:42 PM](#)

SENATOR HUGHES asked him to describe the legal issues.

MR. CRAFT said first, the legislature imposes a rule on the initiative process that it does not impose on itself, which may be in violation of Art. XI, Sec. 7. He said that was the chief concern in the legal opinion. Further, Art. XI, Sec. 4, provides the legislature with the right to review and enact substantially similar legislation. The framers of the Alaska Constitution did not create a direct initiative in the constitution. Instead, the

framers envisioned the legislature would provide the policy review prior to an initiative being placed on the ballot. He related his understanding that many cases were severed after the legislature held its review, thereby going around that review process. The legislature may have supported the language at the time of the review. If the language changed from when voters signed a petition, the voters might be voting for the initial initiative language rather than the final version.

[1:52:51 PM](#)

SENATOR KIEHL commented that the Art. XII, Sec. 11 question is a problem for the bill. However, he is sympathetic to the concern that voters sign one thing only to find out that something else is placed on the ballot. It is a material difference from how the legislature enacts bills. Bills must pass both bodies in identical language. He asked whether the sponsor had considered requiring an earlier review of the language before an initiative sponsor invested substantial funds into the process. He wondered if the legal review could happen at an earlier point.

[1:54:11 PM](#)

MR. CRAFT responded that the sponsor has researched how other states conduct their initiatives. He acknowledged that part of the issue is that there could be a knowing deception, a bait and switch. He highlighted the previous committee's questions, including how many cases were severed, which was about five initiatives since the 1980s. Only two cases were severed after the legal review process. In 1988, in the McAlpine v. University of Alaska case, after two years of budget cuts to consolidate administrative costs, an initiative was proposed to create a community college system. The initiative included a real property transfer from the University of Alaska (UA) to the community colleges. People signed the petitions and the legislature reviewed them, but the courts later ruled that the transfer constituted an appropriation. One reason for SB 23 was to address the issue raised in McAlpine v. University of Alaska, where people signed the petitions to allow the transfer of property, not just to create a community college system. He suggested that there might be another way to address the issue, perhaps by modeling how other states have addressed this issue. The sponsor has contacted the National Council of State Legislatures (NCSL) for feedback.

[1:56:37 PM](#)

SENATOR SHOWER stated one issue is that the timing of challenges is unpredictable. For example, challenges could arise after the legislature's review of an initiative.

MR. CRAFT answered yes. The challenge will bypass an important legislative check if the challenge is filed after the legislative review.

[1:57:44 PM](#)

SENATOR MYERS referred to the Alaska Constitution, Art. 12, Sec. 11, which read:

Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.

SENATOR MYERS offered his view that the analogy in terms of severability is whether an initiative may be amended. The legislature uses the amendment process. However, allowing the courts to effectively sever a portion of the initiative effectively allows the courts to amend the initiative. However, there is no provision for the people to amend the initiative since they can only vote to approve or reject the initiatives. He referred to the language "unless clearly inapplicable". An amendment process would be clearly inapplicable in a ballot initiative. If the court system severs the language, it effectively exercises the law-making powers assigned to the legislature. He offered his view that SB 23 does not provide an effective constitutional challenge unless the legal memo identifies something.

[1:59:32 PM](#)

CHAIR HOLLAND said he would like the committee to have an opportunity to review the legal opinion.

[SB 23 was held in committee.]

[2:00:16 PM](#)

At ease

[2:00:51 PM](#)

CHAIR HOLLAND reconvened the meeting. [Due to technical difficulties, the announcement was not recorded].

[2:01:22 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:01 p.m.